

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8681 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASH TRIKAM BORICHA

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR NM KAPADIA for Petitioner

MR KC SHAH AGP for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/10/2000

ORAL JUDGEMENT

The petitioner Prakash Trikam Boricha, in this petitioner under Article 226 of the Constitution of India has challenged the order of detention dtd. 15/5/2000 passed by the Police Commissioner, Surat City under Sec.3(2) of the Gujarat Prevention of Anti-social

Activities Act, 1985 (hereinafter shall be referred to as "the PASA Act" for short). In the grounds of detention supplied to the detenu-petitioner, the detaining authority has placed reliance on criminal case being C.R. No.79 of 2000 registered with the Umara Police Station for the offence punishable under Sec.394, 120(B) of Indian Penal Code, wherein the petitioner was arrested on 8/3/2000 and chargesheet has been filed in the Court. Besides the said case, the detaining authority has also placed reliance on an incident alleged to have been taken place on 23/1/2000 and an incident alleged to have been taken place prior to 10/4/2000, whereby the petitioner and his associates extorted the amount from the witnesses whose identity is not disclosed by creating reign of terror, with the result, the people ran helter-skelter and the routine life of the people was disturbed. In view of the aforesaid materials, the detaining authority has reached to the subjective satisfaction that the detenu is a dangerous person within the meaning of Sec.3(2) of the PASA Act and therefore with a view to preventing the detenu from acting in any manner prejudicial to the public order, it is necessary to detain him.

2. The learned advocate appearing for the petitioner has raised number of contentions. However, the petition is capable of being disposed of only on the one point that the detaining authority has not applied its mind while considering the materials before passing the detention order against the detenu. As stated above, the detenu is involved in a criminal case being C.R. No.79 of 2000 for the alleged offence punishable under Sec.394, 120(B) of Indian Penal Code and was arrested on 8/3/2000. The aforesaid offences are non-bailable offence. The detaining authority being a police commissioner is expected to know that the said offences are non-bailable offence, however, in the grounds of detention supplied to the detenu, he has stated that the offences under Sections 394, 120(B) in which the petitioner is involved are bailable offences. This being a fit case of non-application of mind, and therefore, it is not possible to sustain the impugned order of detention any further. No detention order can ever be passed as the detention order is required to be passed on the basis of subjective satisfaction of the detaining authority. The detaining authority is required to pass the detention order with full sense of accountability and awareness perusing the word by word, and line by line all the allegations levelled against the proposed detenu based on material documents in support of the same personally satisfying the Detaining Authority about the genuineness,

gravity and seriousness of allegation on the basis of which the order of detention is ultimately passed, so that by mistake even nobody is sent behind the bars without trial without the necessary application of mind. The above principle has been settled by the Hon'ble Supreme Court while deciding the case of Yakub Ismail Chhipa vs. The District Magistrate, Bharuch, 1996(1) GLR page 4.

3. In the result, the petition is allowed, the order of detention dtd. 15/5/2000 passed by the respondent No.1 is hereby quashed and set aside. Rule made absolute.

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